

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
FOR THE STATE OF MICHIGAN,

Petitioner,

v

THE WELLNESS PLAN, INC.,  
a Michigan health maintenance organization

File No. 03-1127 -CR

Hon. WILLIAM E. COLLETTE

Respondent.

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VERIFIED PETITION OF THE  
MICHIGAN COMMISSIONER OF THE OFFICE  
OF FINANCIAL AND INSURANCE SERVICES  
FOR:  
ORDER OF REHABILITATION,  
APPROVAL OF DEPUTY REHABILITATOR  
AND INJUNCTIVE RELIEF

Linda A. Watters, Commissioner of the Office of Financial & Insurance Services of the State of Michigan (OFIS), by her attorneys, Michael A. Cox, Attorney General of Michigan, and E. John Blanchard and Michael J. Fraleigh, Assistant Attorneys General, and hereby petition the Court for an Order of Rehabilitation pursuant to MCL 500.8112 and MCL 500.8113 as follows:

GENERAL ALLEGATIONS

1. Linda A. Watters is the duly appointed Commissioner of the Office of Financial & Insurance Services of the State of Michigan ("Commissioner").
2. Only the Commissioner may commence a delinquency proceeding against a health maintenance organization ("HMO") licensed pursuant to Chapter 35 of the Michigan Insurance Code, MCL 500.3501 *et se.*, MCL 500.3503 and MCL 500.8104(1).

3. For purposes of a rehabilitative receivership, an HMO is treated in the same manner as an insurer pursuant to Chapter 81 of the Insurance Code, MCL 500.8101 *et seq.* MCL 500.3503(1)

4. The Circuit Court for Ingham County has the sole jurisdiction over a rehabilitation proceeding commenced under Chapter 81 of the Insurance Code. MCL 500.8104(3).

5. A HMO is defined in the Insurance Code, MCL 500.3501(f), as follows:

(f) "Health maintenance organization" means an entity that does the following:

(i) Delivers health maintenance services that are medically indicated to enrollees under the terms of its health maintenance contract, directly or through contracts with affiliated providers, in exchange for a fixed prepaid sum or per capita prepayment, without regard to the frequency, extent, or kind of health services.

(ii) Is responsible for the availability, accessibility, and quality of the health maintenance services provided.

6. Respondent, The Wellness Plan ("Wellness"), is a not-for-profit organization formed for the purpose of promoting and operating a health maintenance organization.

7. Wellness commenced business as a licensed HMO on December 31, 1975 and is located at 2875 W. Grand Boulevard, Detroit, Michigan. Wellness is providing health care services to approximately 117,505 covered members primarily in the southeastern Michigan-Detroit area.

8. Wellness contracts with the Michigan Department of Community Health to provide health care services to approximately 107,200 Medicaid enrollees. Approximately 10,300 subscribers are covered under commercial-employer health care contracts.

9. On November 26, 2001, the Commissioner issued an Order of Supervision. The Order of Supervision was issued because Wellness did not meet the minimum financial requirements set forth in the Michigan Insurance Code and was in a financially hazardous

position because of continued operating losses, declining net worth, deficient working capital, under-funded self-insured malpractice and stop loss trusts, and deficiencies in claims reserves.

10. The Supervision Order required Wellness to implement several actions in order to abate the Supervision Order and place Wellness in a sound financial condition. Wellness failed to comply with the terms and conditions of the Supervision Order.

#### WELLNESS HAS CONSENTED TO THE REHABILITATION

11. The Commissioner and Wellness have Stipulated that:
1. The Wellness Plan is currently under an Order of Supervision and has failed to fully meet the terms and conditions of the November 26, 2001 Order of Supervision.
  2. The Wellness Plan currently meets the statutory conditions for Rehabilitation based on the following grounds:
    - a. MCL 500.8112(a) – The Wellness Plan's financial condition has deteriorated to the point that continued transaction of business would be hazardous financial to its policyholders, creditors, and/or public.
    - b. MCL 500.8112(m) – The Wellness Plan was found, after an examination, to no longer meet the requirements for incorporation and authorization as a health maintenance organization in Michigan.
    - c. MCL 500.8109(4) – The Wellness Plan has failed to fully comply with the November 26, 2001 Order of Supervision within 60 days of the date of the Order of Supervision.
  3. On March 13, 2003, the Wellness Plan had discussions with a potential source of funding and requested additional time to obtain financing sufficient to bring The Wellness Plan into complete statutory financial compliance.
  4. On or before April 21, 2003, The Wellness Plan will deliver to Judy Weaver, Deputy Commissioner of Supervisory and Insurance monitoring Division, at 611 W. Ottawa, Lansing, MI, 48933, all of the following:

- a. A binding and irrevocable commitment of capital in an amount sufficient to bring The Wellness Plan into full statutory compliance with:
    - i. Solvency requirements set forth in MCL 500.3551(3);
    - ii. The risk based capital requirements for operation without mandatory or permissive OFIS regulatory intervention as set forth in MCL 500.403; MCL 500.410, and Bulletin 98-02; and
    - iii. Provide an adequate level of working capital sufficient to satisfy the Office of Insurance and Financial Services, in its complete and sole discretion, that The Wellness Plan's failure to meet the statutory working capital requirements set forth in MCL 500.3555 will not impair The Wellness Plan's ability to pay all of its obligations in a timely manner as they become due.
  - b. A plan to meet the statutory working capital requirements set forth in MCL 500.3555 within a reasonable time. The adequacy, reasonableness and acceptability of the propose plan shall be subject to the sole and complete discretion of OFIS.
- 5. The financing required and committed by or pursuant to the terms of paragraph 4 must be in a form and substance approved by the Office of Financial and Insurance Services.
  - 6. The financing required under paragraph 4 must be disbursed to and under the control of Wellness on or before July 1, 2003.
  - 7. Failure of Wellness to obtain financing and meet the requirements as set forth in paragraphs 4, 5, and 6 authorizes the Office of Financial and Insurance Services to immediately place The Wellness Plan into Rehabilitation under MCL 500.8101 *et seq.*
  - 8. An executed copy of this Stipulation and Consent Judgment may be attached to OFIS' Petition for Entry of an Order of Rehabilitation and Injunctive Relief and filed with the Ingham County Circuit Court by OFIS to obtain the entry of an Order of Injunctive Relief. The signed Stipulation and Consent of Transition to Rehabilitation shall constitute the consent of The Wellness Plan to the granting of OFIS' Petition for Entry of an Order of Rehabilitation and Injunctive Relief and the Entry by the Ingham County Circuit Court of an Order of Rehabilitation and Injunctive Relief.
  - 9. The terms, conditions, and relief sought by the Petition for Rehabilitation and Injunctive Relief and the Order of Rehabilitation and Injunctive Relief

shall be within the sole and complete discretion of the Commissioner of OFIS.

10. The Wellness Plan will not contest the grounds, terms, conditions, or relief sought by the Petition for Entry of an Order of Rehabilitation and Injunctive Relief or the Order of Rehabilitation and Injunctive Relief.
11. The Wellness Plan's Board of Directors has approved this Stipulation for the entry of a Consent Order to Transition to Rehabilitation and the entry of the Consent Judgment set forth below under the terms and conditions set forth in this Stipulation.
12. The Wellness Plan's Board of Directors has authorized Isadore King, Chief Executive Officer of The Wellness Plan, to enter into this Stipulation and consent to the entry of the Consent Judgment as set forth in this Stipulation and Consent Order.
13. A copy of The Wellness Plan's Board of Director's Resolution confirming paragraphs 11 and 12 of this Stipulation will be provided to OFIS with copy of the executed Stipulation.
14. In consideration of The Wellness Plan's request for additional time to secure adequate financing and the execution of this Stipulation for Entry of a Consent Order for Transition to Rehabilitation, OFIS agrees to forego filing a Petition to force The Wellness Plan until April 22, 2003.

Stipulation for Entry of a Consent Order of Transition to Rehabilitation and Consent Order of Transition to Rehabilitation. pp 1-5, (April 4, 2003)  
Attachment 1.

12. Wellness failed to meet the requirements of the Stipulation and Consent Order for Transition to Rehabilitation. (Attachment 1) Accordingly, the Commissioner is petitioning the Court for an Order of Rehabilitation, Approval of a Deputy Rehabilitator, and Injunctive Relief. Attachment 2 is a proposed Order.

In addition, Wellness' Board of Directors consent to the entry of an Order of Rehabilitation is sufficient grounds to place Wellness into rehabilitation. MCL 500.8112(1).

**WELLNESS MUST BE PLACED  
INTO REHABILITATION IMMEDIATELY**

13. Wellness must be placed in rehabilitation to:

- a. preserve and protect its assets from further dissipation,
- b. to protect subscribers, creditors, and the public, and
- c. to preserve the provider network and maintain continuity of health care services.

Further, based on Wellness' hazardous financial condition, the Commissioner has determined that the interests of subscribers, enrollees, creditors, and the public will be endangered by any delay.

**AN ORDER OF REHABILITATION IS  
WARRANTED AND AUTHORIZED BY LAW**

14. In part, the Commissioner's authority to take control of Wellness, its assets, operations, documents, and to protect Wellness' assets, business, subscribers or enrollees, provider network is set forth in MCL 500.8105, MCL 500.8106, MCL 500.8112, MCL 500.8113 and MCL 500.8115.

15. A rehabilitator is entitled to injunctive relief as provided in MCL 500.8105, which states that:

(1) A receiver appointed in a proceeding under this chapter may at any time apply for, and the circuit court for Ingham county may grant, a restraining order, preliminary injunction, permanent injunction, and any other order as may be considered necessary and proper to prevent any of the following:

- (a) The transaction of further business by the insurer.
- (b) The transfer of property.
- (c) Interference with the receiver or with a proceeding under this chapter.
- (d) Waste of the insurer's assets.
- (e) Dissipation and transfer of bank accounts.
- (f) The institution or further prosecution of any actions or proceedings.

(g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders.

(h) The levying of execution against the insurer, its assets, or its policyholders.

(i) The making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the insurer's assets.

(j) The withholding from the receiver of books, accounts, documents, or other records relating to the insurer's business.

(k) Other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

#### APPOINTMENT OF DEPUTY REHABILITATORS

1. The Rehabilitator is authorized to appoint Special Deputy Rehabilitators who shall serve at the pleasure of the Commissioner. MCL 500.8114(1).

2. Pursuant to MCL 500.8114(1), the compensation of Special Deputy Rehabilitators and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the Commissioner, with the approval of the Court. Section 8114(1) provides that:

3. The Commissioner, as Rehabilitator, would like to retain the services of Eoshealth Regulatory Services, LLC, an Arizona company to serve as Deputy Rehabilitator for Wellness. Attachment 2 is a summary of Eoshealth's credentials.

4. Eoshealth will have all the powers and duties of the Deputy Rehabilitator as set forth in Chapter 81, of the Michigan Insurance Code.

5. Compensation for eoshealth is set forth in Attachment A of the proposed contract attached as Exhibit 3. The costs and expenses of the Special Deputy Rehabilitator will be paid from the moneys available to Wellness. MCL 500.8114(1) The Commissioner may advance the necessary funds and obtain reimbursement from Wellness's assets. *Id.*

6. The Rehabilitator has determined that it is appropriate and necessary for the success of the rehabilitation that the services of Eoshealth as Special Deputy Rehabilitator be approved so that this Rehabilitation may proceed effectively, efficiently and provide the maximum protection of creditors, subscribers, enrollees, and the public.

Relief Requested

Based on the foregoing, the Commissioner requests that the Court immediately issue an Order that:

1. Places The Wellness Plan into rehabilitation pursuant to MCL 500.8101 *et seq.*
2. Grants the Commissioner possession, title and control of Wellness, its assets, resources, business to the full extent allowed by law.
3. Approves the appointment and compensation of Eoshealth Regulatory Services, LLC, as Special Deputy Rehabilitator.
4. Grants the injunctive relief necessary to protect Wellness' business, assets, subscribers and members, creditors, the public, and the rehabilitation process
5. Grants the Commissioner such other and further relief that is necessary and appropriate for the rehabilitation of The Wellness Plan.

  
Linda A. Watters, Commissioner  
Office of Financial & Insurance Services

Subscribed and sworn to before me  
this 30th day of July 2003.

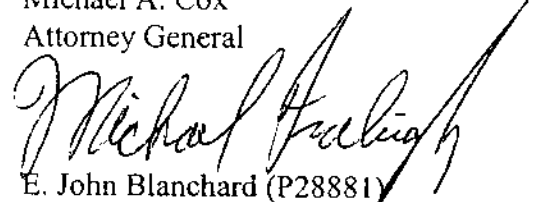
  
Notary Public, Clinton County, MI  
My Commission Expires: 8-22-03

(acting in Ingham Co)



Respectfully submitted

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "Michael Fraleigh", written over the typed name.

E. John Blanchard (P28881)  
Michael J. Fraleigh (P36615)  
Assistant Attorney General  
Insurance & Banking Division  
P.O. Box 30212  
Lansing, Michigan 48909  
(517) 373-1160

Dated: July 1, 2003

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STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

THE WELLNESS PLAN

No. 03-019-M

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STIPULATION FOR ENTRY OF A  
CONSENT ORDER OF TRANSITION TO REHABILITATION  
AND  
CONSENT ORDER OF TRANSITION TO REHABILITATION

STIPULATION

The Wellness Plan and Office of Financial and Insurance Services (OFIS) stipulate to the following:

1. The Wellness Plan is currently under an Order of Supervision and has failed to fully meet the terms and conditions of the November 26, 2001 Order of Supervision.

2. The Wellness Plan currently meets the statutory conditions for Rehabilitation based on the following grounds:

- a. MCL 500.8112(a) - The Wellness Plan's financial condition has deteriorated to the point that continued transaction of business would be hazardous financially to its policyholders, creditors, and/or the public.

- b. MCL 500.8112(m) - The Wellness Plan was found, after an examination, to no longer meet the requirements for incorporation and authorization as a health maintenance organization in Michigan.
- c. MCL 500.8109(4) - The Wellness Plan has failed to fully comply with the November 26, 2001 Order of Supervision within 60 days of the date of the Order of Supervision.

3. On March 13, 2003, The Wellness Plan had discussions with a potential source of funding and requested additional time to obtain financing sufficient to bring The Wellness Plan into complete statutory financial compliance.

4. On or before April 21, 2003, The Wellness Plan will deliver to Judy Weaver, Deputy Commissioner of Supervisory and Insurance Monitoring Division, at 611 W. Ottawa, Lansing, MI, 48933, all of the following:

- a. A binding and irrevocable commitment of capital in an amount sufficient to bring The Wellness Plan into full statutory compliance with:
  - i. Solvency requirements set forth in MCL 500.3551(3);
  - ii. The risk based capital requirements for operation without mandatory or permissive OFIS regulatory intervention as set forth in MCL 500.403; MCL 500.410, and Bulletin 98-02; and
  - iii. Provide an adequate level of working capital sufficient to satisfy the Office of Insurance and Financial Services, in its complete and sole discretion, that The Wellness Plan's failure to meet the statutory working capital requirements set forth in MCL 500.3555 will not impair The Wellness Plan's ability to pay all of its obligations in a timely manner as they become due.

- b. A plan to meet the statutory working capital requirements set forth in MCL 500.3555 within a reasonable time. The adequacy, reasonableness and acceptability of the proposed plan shall be subject to the sole and complete discretion of OFIS.
5. The financing required and committed by or pursuant to the terms of paragraph 4 must be in a form and substance approved by the Office of Financial and Insurance Services.
6. The financing required under paragraph 4 must be disbursed to and under the control of Wellness on or before July 1, 2003.
7. Failure of The Wellness Plan to obtain financing and meet the requirements as set forth in paragraphs 4, 5, and 6, authorizes the Office of Financial and Insurance Services to immediately place The Wellness Plan into Rehabilitation under MCL 500.8101 *et seq.*
8. An executed copy of this Stipulation and Consent Judgment may be attached to OFIS' Petition for Entry of an Order of Rehabilitation and Injunctive Relief and filed with the Ingham County Circuit Court by OFIS to obtain the entry of an Order of Rehabilitation and Injunctive Relief. The signed Stipulation and Consent of Transition to Rehabilitation shall constitute the consent of The Wellness Plan to the granting of OFIS' Petition for Entry of an Order of Rehabilitation and Injunctive Relief and the Entry by the Ingham County Circuit Court of an Order of Rehabilitation and Injunctive Relief.
9. The terms, conditions, and relief sought by the Petition for Rehabilitation and Injunctive Relief and the Order of Rehabilitation and Injunctive Relief shall be within the sole and complete discretion of the Commissioner of OFIS.

10. The Wellness Plan will not contest the grounds, terms, conditions, or relief sought by the Petition for Entry of an Order of Rehabilitation and Injunctive Relief or the Order of Rehabilitation and Injunctive Relief.

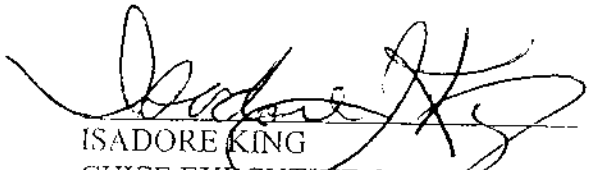
11. The Wellness Plan's Board of Directors has approved this Stipulation for the entry of a Consent Order to Transition to Rehabilitation and the entry of the Consent Judgment set forth below under the terms and conditions set forth in this Stipulation.

12. The Wellness Plan's Board of Directors has authorized Isadore King, Chief Executive Officer of The Wellness Plan, to enter into this Stipulation and consent to the entry of the Consent Judgment as set forth in this Stipulation and Consent Order.

13. A copy of The Wellness Plan's Board of Director's Resolution confirming paragraphs 11 and 12 of this Stipulation will be provided to OFIS with a copy of the executed Stipulation.

14. In consideration of The Wellness Plan's request for additional time to secure adequate financing and the execution of this Stipulation for Entry of a Consent Order for

Transition to Rehabilitation, OFIS agrees to forego filing a Petition to force The Wellness Plan until April 22, 2003.

  
ISADORE KING  
CHIEF EXECUTIVE OFFICER  
THE WELLNESS PLAN

\_\_\_\_\_  
MICHAEL J. FRALEIGH (P36615)  
Assistant Attorney General  
Department of Attorney General  
Attorneys for Commissioner  
Office of Financial and Insurance Services

DATED

4/2/02

DATED

**CONSENT ORDER OF TRANSITION TO REHABILITATION**

Issued and entered  
this \_\_\_\_\_ day of \_\_\_\_\_, 2003  
by


RONALD C. JONES, JR., ACTING COMMISSIONER


Based on the Stipulation of The Wellness Plan set forth in the above Stipulation for  
Consent Order of Transition of Rehabilitation,

IT IS HEREBY ORDERED THAT:

1. On or before April 21, 2003, The Wellness Plan will provide the Office of Financial and Insurance Services (OFIS) with all of the following:
  - a. A binding and irrevocable commitment of capital in an amount sufficient to bring  
The Wellness Plan into full statutory compliance with:
    - i. Solvency requirements set forth in MCL 500.3551(3);

Transition to Rehabilitation, OFIS agrees to forego filing a Petition to force The Wellness Plan until April 22, 2003.

  
ISADORE KING  
CHIEF EXECUTIVE OFFICER  
THE WELLNESS PLAN

  
MICHAEL J. FRALEIGH (P36615)  
Assistant Attorney General  
Department of Attorney General  
Attorneys for Commissioner  
Office of Financial and Insurance Services

DATED 4/2/02

DATED 4-3-03

**CONSENT ORDER OF TRANSITION TO REHABILITATION**

Issued and entered  
this 4<sup>th</sup> day of April, 2003  
by

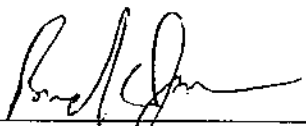
RONALD C. JONES, JR., ACTING COMMISSIONER

Based on the Stipulation of The Wellness Plan set forth in the above Stipulation for Consent Order of Transition of Rehabilitation,

**IT IS HEREBY ORDERED THAT:**

1. On or before April 21, 2003, The Wellness Plan will provide the Office of Financial and Insurance Services (OFIS) with all of the following:
  - a. A binding and irrevocable commitment of capital in an amount sufficient to bring The Wellness Plan into full statutory compliance with:
    - i. Solvency requirements set forth in MCL 500.3551(3);

- ii. The risk based capital requirements for operation without mandatory or permissive OFIS regulatory intervention as set forth in MCL 500.403; MCL 500.410, and Bulletin 98-02; and
  - iii. Provide an adequate level of working capital sufficient to satisfy the Office of Financial & Insurance Services, in its complete and sole discretion, that The Wellness Plan's failure to meet the statutory working capital requirements set forth in MCL 500.3555 will not impair The Wellness Plan's ability to pay all of its obligations in a timely manner as they become due.
- b. A plan to meet the statutory working capital requirements set forth in MCL 500.3555 within a reasonable time. The adequacy, reasonableness and acceptability of the proposed plan shall be subject to the sole and complete discretion of OFIS.
2. If The Wellness Plan does not meet the requirements set forth in the preceding paragraph by 5:00 p.m. April 21, 2003, an Order of Rehabilitation will be sought immediately from the Ingham County Circuit Court.



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RONALD C. JONES, JR.  
Acting Commissioner  
Office of Financial and Insurance Services



1. Based on MCL 500.8103(b), a creditor is a person having a claim against The Wellness Plan (Wellness), whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

2. Based on MCL 500.8105(1), the Court is authorized to enter an Order it considers to be necessary and proper to prevent:

- a. Interference with the Rehabilitator or with the Rehabilitation proceedings;
- b. The institution or further prosecution of any actions or proceedings against Wellness, its assets, or its members;
- c. The obtaining of preferences, judgments, attachments, garnishments, or liens against Wellness, its assets, or its members;
- d. The levying of execution against Wellness, its assets, or its members;
- e. Any other threatened or contemplated action that might lessen the value of Wellness' assets or prejudice the rights of its members, creditors, or the administration of this rehabilitation proceeding.

3. All creditor claims against Wellness are within the jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

4. MCL 500.8114(2) in conjunction with MCL 500.8121(1)(m) authorizes the Rehabilitator to: "[P]rosecute any action that may exist on behalf of creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

5. Wellness has stipulated to the existence of the legal and factual basis for the entry of an Order placing Wellness into rehabilitation.

6. Wellness has stipulated to the entry of an Order placing Wellness into rehabilitation on terms and conditions the Commissioner deems appropriate.

7. Immediate action placing Wellness into rehabilitation is necessary to protect the interest of Wellness' members, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Commissioner's Petition for Order of Rehabilitation is GRANTED, and The Wellness Plan ("Wellness") is placed into Rehabilitation pursuant to MCL 500.8101 *et seq.*

2. The Commissioner is appointed Rehabilitator of Wellness, and is further authorized to appoint one or more Special Deputy Rehabilitator pursuant to MCL 500.8114(1). Hereafter the Commissioner shall be referred to as the Rehabilitator.

3. The Rehabilitator shall take immediate possession of all the assets of Wellness and administer those assets under the Court's general supervision.

4. By operation of law, legal title to all assets, accounts and moneys of Wellness is hereby vested in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the principal office or place of business of the Respondent is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

5. The Rehabilitator, shall have all the powers set forth in MCL 500.8114 and 500.8115 without being specifically set forth in this Order, all applicable powers set forth in Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 *et seq.*, and such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

6. All powers of the current directors, officers, and managers of Wellness, are hereby suspended in their entirety upon issuance of this Order. The Rehabilitator shall have and exercise the full and complete power of directors, officers, and managers. The Rehabilitator may

redelegate, in writing, some or all of her authority to a director, officer(s) or manager of Wellness.

7. The Rehabilitator shall have full power and authority to direct, manage, hire, and discharge employees subject to any contract rights they have, and to deal in totality with the property and business of Wellness as provided by law.

8. A director, manager, officer, employee or agent of Wellness and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of Wellness.

9. The Rehabilitator may take such action as she considers necessary or appropriate to reform or revitalize the Wellness, and is empowered to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformation of Wellness to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

10. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Wellness is appropriate, she shall prepare a plan to effect those changes. The plan shall be submitted to the Court for approval.

11. The Rehabilitator shall take all steps necessary to preserve the existing provider network and to maintain uninterrupted health care services. The Rehabilitator shall take all necessary steps to provide payment on a going forward basis to all health care providers for goods or services rendered subsequent to the date of this Order pursuant to all existing provider relationships and agreements, WHICH RELATIONSHIPS AND AGREEMENTS, OR AMENDED AGREEMENTS, REMAIN IN FULL FORCE AND EFFECT pursuant to MCL 500.8105(1)(k), until further order of this Court.

The Rehabilitator shall, by December 31, 2003, and every six (6) months thereafter, review the necessity for the continuation of the provisions of this paragraph of the Order and

make a recommendation to the Court regarding the continued need for the injunctive relief it provides.

12. The Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order, until further order of this Court.

13. The Rehabilitator shall pay Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

14. Entry of this Order shall not constitute an anticipatory breach of any contracts or relationship between Wellness and other persons. MCL 500.8113(3). All persons, including medical service providers, doing business with Wellness on the date of this Order are hereby enjoined and restrained from terminating or attempting to terminate such relationship or contract on the basis of the entry of this Order or Wellness' financial condition during the pendency of the rehabilitation. MCL 500.8105(1)(k).

15. All employees, officers, directors or agents of Wellness, or any other persons with authority over or in charge of any segment of the affairs of Wellness, shall cooperate fully with the Rehabilitator and the Deputy Rehabilitator. MCL 500.8106. Among other things, full cooperation requires:

(a) Prompt replies to any inquiry by the Rehabilitator including a written reply when requested.

(b) Providing the Rehabilitator with immediate, full and complete possession, control, access to and use of all books, accounts, documents, and other records, information or property of or pertaining to Wellness in the possession, custody, or control of any person or entity as may be necessary so as to enable the Rehabilitator and Deputy Rehabilitator to operate the business and to maintain the continuity of health care services being provided to all subscribers.

judgments and/or balance billing of Wellness' subscribers, enrollees or members for medical goods provided or services rendered prior to the date of this Order. This prohibition does not apply to any applicable co-payments, deductibles or fees for medical goods or services that are not covered by Wellness.

19. Pursuant to MCL 500.8105(1) and MCL 500.8114(2) and except as provided in §§ 18, 21, 22, and 23 all Creditors of Wellness are enjoined from:

- a. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Wellness, its assets, its members, its enrollees, its subscriber, its officers, its directors, or its employees;
- b. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator, his agents, or the State of Michigan and its officers, agencies or departments for claims or actions arising out of or related to claims against Wellness or proceedings under MCL 500.8101 *et seq*;
- c. Obtaining preferences, judgments, attachments, garnishments, or liens against Wellness, its assets, its subscribers or members, its officers, its directors, or its employees;
- d. Levying of execution against Wellness, its assets, its subscribers, enrollees or members, its officers, its directors, or its employees;
- e. Taking any other action that may lessen the value of Wellness' assets or prejudice the rights of Wellness' creditors as a whole, its subscribers, enrollees or members or the administration of this rehabilitation proceeding.

20. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator or member or subscriber for the reasonable costs and attorney fees incurred in

enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

21. All creditor claims against Wellness are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

22. Any and all claims by Creditors against Wellness must be raised or asserted within the rehabilitation proceedings before this Court and are subject to this Court's orders regarding the submission and determination of claims.

23. The Rehabilitator shall develop a method for the submission, evaluation and resolution of all claims for goods and services provided to Wellness and its subscribers or members prior to the date of this Order.

24. All employer groups and other entities currently contracted with Wellness for health care services for its employees, members, enrollees or recipients, are hereby enjoined and restrained from terminating or attempting to terminate such relationship prior to the contract's expiration date or any automatic renewal or extension of the contract. MCL 500.8105(1)(k) and MCL 500.8113(3)..

25. The Rehabilitator's appointment of Eoshealth Regulatory Services, LLC as Deputy Rehabilitator is approved. Eoshealth shall have such authority and responsibilities as may be delegated to it by the Rehabilitator. The proposed fees for Eoshealth's services are approved. Eoshealth's fees and expenses shall be paid pursuant to its contract with the Rehabilitator and MCL 500.8114(1).

26. The Rehabilitator shall make an accounting to the Court of Wellness' financial condition and progress to towards rehabilitation on or before December 31, 2003, and each succeeding six-month period thereafter.

27. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary and appropriate.

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Circuit Judge

## REHABILITATION SERVICES AGREEMENT

This Rehabilitation Services Agreement (the "Agreement") is entered into this 1st day of July, 2003 (the "Effective Date"), by and between eoshealth regulatory services, llc., an Arizona corporation ("eoshealth") and the Commissioner of the Office of Financial and Insurance Services as the court appointed Rehabilitator of The Wellness Plan, Inc., a Michigan health maintenance organization (the "Rehabilitator").

### BACKGROUND

eoshealth regulatory services specializes in the rehabilitation of health maintenance organizations and health insurers which have been placed under the control of the Insurance Commissioner through a stipulation, conservatorship, receivership, rehabilitation, or liquidation. Pursuant to that certain Order Placing The Wellness Plan Into Rehabilitation, Approving The Appointment Of A Special Deputy Rehabilitator and Providing Injunctive Relief dated July 1, 2003 (the "Order"), the Insurance Commissioner of the State of Michigan has assumed control of The Wellness Plan ("TWP") and has appointed eoshealth as the Deputy Rehabilitator.

NOW, THEREFORE, the parties agree as follows:

1. Background. The statements in the foregoing section entitled Background are true and correct, and incorporated into this Agreement by this reference.
2. Engagement. The Rehabilitator hereby engages eoshealth, and eoshealth hereby accepts such engagement, to perform the services specified herein in accordance with the terms and conditions of this Agreement and MCL 500.8101 *et. seq.*
3. Rehabilitation Services. In accordance with the provisions of the Order and subject to the supervision and direction of the Rehabilitator, eoshealth shall assume the role and duties of the Deputy Rehabilitator to include, without limitation, the obligation to carry out all of the responsibilities of management of TWP throughout the term of this Agreement, to possess and control the business and business assets of TWP, including the bank accounts of TWP, and to pay all debts and obligations of TWP in the course of its business, and receive and deposit all receivables of TWP. In addition, eoshealth shall adhere to the Office of Financial and Insurance Services' Receivership Policies and Procedures.  
eoshealth shall provide sufficient management staffing with the training, experience, and expertise necessary to accomplish the purposes of this contract.
4. Compensation. For the provision of services rendered hereunder, eoshealth shall be paid by TWP in accordance with Exhibit "A", attached hereto.
5. Term and Termination



5.1 Term. This Agreement shall commence as of the Effective Date and continue for an initial period of three (3) years. Upon the third anniversary of the Effective Date, and each anniversary of the Effective Date thereafter, this Agreement shall automatically renew for additional periods of one year.

5.2 Termination by the Rehabilitator. This Agreement may be terminated by the Rehabilitator as provided under MCL 500.8114. In addition, the Rehabilitator may terminate this Agreement if the Rehabilitator decides to sell the members or if TWP reaches statutory financial compliance.

5.3 Termination by eoshealth. This Agreement may be terminated by eoshealth effective no sooner than ninety (90) days from delivery of written notice to the Rehabilitator.

5.4 Termination with Cause. This Agreement may also be terminated by either party for cause, subject to the following: (i) Notice must be in writing and state the contractual breach upon which termination is being based as specifically as possible, (ii) the other party shall have thirty (30) days from the notice date to correct the breach, (iii) if the breach is not reasonably corrected within the 30 day period, the Agreement will terminate effective at the end of the thirtieth calendar day following the notice date.

## 7. General Provisions

7.1 Entire Understanding; Waiver. This Agreement, and the Exhibits attached hereto, contain the whole of the understanding between the parties hereto relating in any manner to its subject matter and supersedes all pre-dated agreements, representations, warranties, statements promises and understandings, whether oral or written. Any representation, warranty, covenants, understanding or agreement not contained or incorporated into this Agreement by reference will be of no force or effect. No modification or waiver of this Agreement, or any part of it, will be valid unless in writing, signed by the party sought to be charged therewith; and no waiver of any breach or condition of this Agreement will be deemed to be a waiver of any subsequent breach or condition, whether of like or different nature.

7.2. Immunity. The Rehabilitator affirms that, in its performance of services hereunder, eoshealth shall have the same immunity as afforded the Rehabilitator under MCL 500.214.

7.3 Headings; Severability. The headings used in this Agreement are for convenience or reference only, do not constitute a part of this Agreement, and will not be deemed to limit, characterize or in any way affect any provision of this Agreement. If any provision of this Agreement is invalid, illegal or unenforceable, the

balance of this Agreement will remain in effect, and if any provision is inapplicable to any person or circumstance, it will nevertheless remain applicable to other persons and circumstances.

7.4 Assignment; Binding Effect. Except as otherwise stated herein, no rights, interests or obligation hereunder may be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, should eoshealth undergo a sale of a majority of its stock or assets to another entity, eoshealth may assign this Agreement to such new entity; provided, however, that eoshealth shall not be relieved of its obligations hereunder unless same are discharged in accordance with the terms and conditions of this Agreement by the new entity. Except as otherwise provided in this Agreement to the contrary, this Agreement will be binding upon and is for the benefit of the parties hereto and their permitted successors, transfers and assigns, and is not for the benefit of any other person or entity.

7.5 Mediation; Litigation; Costs. If either party should declare a breach of this Agreement, or if any dispute arises from this Agreement or the subject of this Agreement, the parties shall first submit the matter to non-binding mediation (not arbitration) and attempt to resolve the matter, in good faith, prior to the institution of any litigation or other legal action. The parties agree that litigation or other legal action may be begun only after each party has presented its case to an independent, professional mediator and such mediator has declared an impasse. Any statements made at such mediation shall be for settlement purposes only and shall not be construed to be an admission. A party requesting mediation shall be entitled to obtain a court order mandating mediation if the other party does not agree to commence mediation within thirty (30) days after written request. The fees and costs incurred by the party seeking such court order shall be reimbursed by the other party; otherwise, each party shall pay its own costs of mediation. Nothing in this paragraph shall preclude either party from seeking remedies in equity if such action is found to be appropriate by a court of competent jurisdiction. Except for a proceeding in equity, any party that circumvents this provision shall reimburse the other party for its legal fees and costs, regardless of the outcome.

7.6 Governing Law; Jurisdiction; Venue. This Agreement has been entered into, and will be governed by and construed in accordance with, the laws of the State of Michigan. Any suit, action or proceeding arising out of or relating to this Agreement shall only be commenced and maintained in a court of competent jurisdiction in Lansing, Michigan, and each party waives objection to such jurisdiction and venue.

7.7 Further Assurances. Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments as will from time to time be reasonably required to carry out the terms and provision of this Agreement.

7.8 Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute and the same instrument.

7.9 Notices. Any notice, demand or other document required or permitted to be delivered hereunder will be in writing and may be delivered personally or will be deemed to be delivered when deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

8. Court Approval Required. This Contract is contingent upon the Ingham County Circuit Court's appointment of Commissioner Watters as Rehabilitator of Wellness, the approval of the terms of the Contract and the approval of eoshealth as Deputy Rehabilitator for The Wellness Plan, Inc.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the Effective Date above.

eoshealth regulatory services, llc.:

Office of Financial and Insurance  
Services:

By: \_\_\_\_\_

By: \_\_\_\_\_

Linda A Watters

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Print Name/Title

Address for Notice:

Richard E. Standridge, M.D.  
CEO  
2141 E. Broadway Road  
Tempe, AZ 85282

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT "A"

### Compensation

During the term of this Agreement, eoshealth shall receive, as compensation for the provision of services hereunder, the compensation set forth below. All compensation due to eoshealth will be billed to and directly paid by The Wellness Plan, Inc. (TWP).

#### A-1. Fixed compensation.

A. For the period of July 2003 through February 2004, eoshealth shall be paid a fixed amount of \$150,000 at the beginning of each month plus any performance-based compensation it may be entitled to pursuant to paragraph A-2.

B. Beginning March 2004 and thereafter, eoshealth shall, except as provided in subparagraph C, be paid only the performance-based compensation provided for in paragraph A-2.

C. If TWP's monthly revenues decline by twenty percent (20%) or more from the monthly revenues on the Effective Date of this Agreement eoshealth shall be paid a minimum monthly fee of \$150,000. That is, if the performance-based compensation after such a decline in TPW's monthly revenues is less than \$150,000, eoshealth shall receive a minimum of fee \$150,000 per month.

A-2. Performance-based compensation. The performance-based compensation has two components - administrative and medical. The Performance-based Compensation, when earned, is meant to be a positive payment to eoshealth. Therefore, if the calculation of the Administrative Performance-based Compensation or the Medical Performance-based Compensation results in a negative number eoshealth will not be required to pay the Rehabilitator the negative amount.

#### A. Definitions for the calculation of Performance-based compensation

1. Base Administrative Loss Ratio (BAR): TWP's actual audited administrative loss ratio for calendar year 2002.

2. Administrative Savings (AS):  $BAR - CAR$

3. Current Administrative Loss Ratio (CAR): The current calendar year's quarterly administrative loss ratio.

4. Current Medical Loss Ratio (CMR): The current calendar year's quarterly medical loss ratio.

5. Base Medical Loss Ratio (BMR): TWP's actual audited medical loss ratio for calendar year 2002.

6. Quarterly Gross Revenue: TWP's gross revenue for the calendar year quarter that the Performance-based Compensation is being calculated.

B. Calculation of Administrative Performance-based Compensation

1. The calculation of TWP's administrative loss ratio for any given quarter will include eoshealth's compensation, and appropriate adjustments for the annual effect of any negative changes in Medicaid revenue rates and adjustments related to medical expense/ reinsurance reserves (including IBNR), malpractice and stop loss trust reserves, claims reserves, and premium deficiency reserves for time periods prior to eoshealth's being appointed Deputy Rehabilitator of TWP.,

2. Estimated Administrative Loss Ratio Saving for the first quarter after eoshealth is appointed Deputy Rehabilitator shall be \$300,000.

3. eoshealth Administrative Performance-based Compensation will be determined using the following formula:

$$[(BAR - CAR) \times \text{Gross Revenue}] \times 50\%$$

C. Calculation of Medical Performance-based Compensation

1. The calculation of TWP's Medical Loss Ratio for any given quarter will include appropriate adjustments for the annual effect of any negative changes in Medicaid revenue rates and adjustments related to medical expense/ reinsurance reserves (including IBNR), malpractice and stop loss trust reserves, claims reserves, and premium deficiency reserves for time periods prior to eoshealth's being appointed Deputy Rehabilitator of TWP.

2. eoshealth Medical Performance-based Compensation will be determined using the following formula:

$$[(BMR - CMR) \times \text{Gross Revenue}] \times 35\%$$

D. Payment of the Performance -based Compensation

1. Each component of the Performance-Based compensation will be estimated by eoshealth for each quarter of the calendar year and one third of the estimated amount of each component shall be paid to eoshealth at the beginning of each month.

2. For the first quarter that eoshealth is the Deputy Rehabilitator an estimated administrative loss ratio saving of \$300,000 and an estimated medical loss ratio saving of \$600,000 will be used to calculate eoshealth's performance-based compensation. After the first quarter the administrative loss ratio and medical loss ratio will be calculated based on TWP's actual performance as reflected in its financial records.

#### E. Settlement of Performance –based Compensation

1. After the end of each calendar quarter and after calculating the administrative performance-based compensation using TWP financial reports, if an overpayment is made in any quarter (that is, the administrative performance-based compensation paid to eoshealth on an estimated basis exceeds the calculation of such compensation using actual results), such overpayment is used to adjust downward the next quarter's estimated monthly payments. If the calculation of the administrative performance-based compensation using quarterly TWP financial reports results in an underpayment, such underpayment is paid to eoshealth within five (5) calendar days. (See Example Calculation of Administrative Performance-Based Compensation on Attachment A-1)

2. After the end of each calendar quarter and after calculating the medical performance-based compensation using TWP financial reports, if an overpayment is made in any quarter (that is, the medical performance-based compensation paid to eoshealth on an estimated basis exceeds the calculation of such compensation using actual results), such overpayment is used to adjust downward the next quarter's estimated monthly payments. If the calculation of the medical performance-based compensation using quarterly TWP financial reports results in an underpayment, such underpayment is paid to eoshealth within five (5) calendar days. (See Example Calculation of Administrative Performance-Based Compensation on attachment A-1)

3. Upon termination of the Contract there will be a final settlement of the Performance-based Compensation in a manner consistent with Section A-4.

A-3. Direct costs and expenses.

Direct costs and expenses include, but are not limited to, engagement-related travel, airfare, hotel, meals, transportation, parking, postage, courier, long distance telephone, etc. eoshealth will submit an invoice with supporting detail to TWP for the direct costs and expenses every 2 weeks. Such invoices are to be paid within 5 calendar days of receipt.

eoshealth will utilize the State of Michigan's Travel Reimbursement Guidelines for meals, transportation, mileage, and parking. For all other direct costs and expenses eoshealth will use its best efforts to obtain the lowest rates reasonably available for items defined as direct costs and expenses. Direct costs and expenses will not include entertainment, alcohol, luxury accommodations or other items not normally and reasonably necessary and related to the performance of its duties under this Contract.

A-4. Final Settlement of Contract Payments

Within 60 days after the effective date of the termination of the Contract the parties shall based on issued financials and administrative and medical loss ratios determine the whether there has been an overpayment or underpayment of any fees, costs, expenses or other monies paid or owing under the terms of the Contract. The calculations will be based on actual data.

The Parties may offset any amounts owed to them by the other Party. Any amount due to a Party shall be paid within 10 days of the determination of the amount.

## ATTACHMENT "A-1"

### Example Calculation of Administrative Performance-Based Compensation

Administrative loss ratio:	
2002 audited results	11%
Current period, after described adjustments	10%
Difference	1%
Multiplied by revenues for the period	\$100,000
	\$1,000
Multiplied by 50%	50%
Payment to eoshealth	\$500

### Example Calculation of Medical Performance-Based Compensation

Medical loss ratio:	
2002 audited results	90%
Current period, after described adjustments	88%
Difference	2%
Multiplied by revenues for the period	\$100,000
	\$2,000
Multiplied by 50%	35%
Payment to eoshealth	\$700